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February 16, 2017

SOUTHBOROUGH, MA

State Ethics Commission
Enforcement Division
One Ashburton Place, Room 619
Boston, MA 02108-1501

RE: Supplemental Complaint of Violation of Conflict of Interest Law
Leo F. Bartolini, Jr.

Dear Sir or Madam:

I am writing to supplement the complaint of violation of the Conflict of Interest Law against Leo F. Bartolini, Jr. ("Bartolini") which I filed with your office by letter dated December 15, 2016, a copy of which is enclosed. Since that date, I have obtained additional information from the public records of the Town of Southborough, from information provided to me by the signatories to the two citizen petitions ("Petitioners") whom I represent and from proceedings which have occurred before the Southborough Zoning Board of Appeals ("ZBA") between December 15, 2016 and the present and which are continuing.

In my original complaint, I provided you with copies of five (5) disclosure forms which were submitted by Bartolini on June 28, 2010, October 27, 2010, July 27, 2011, August 27, 2013 and March 25, 2014. These forms make alleged disclosures regarding Bartolini and his relationship with William Depietri ("Depietri") who has been a principal in Rosewood Development, Capital Group, Park Central, LLC and now Park Central Investment, LLC. As noted in the initial complaint, Bartolini makes reference in 2010 to having done business with Rosewood, then to having done business with the alleged "parent company" with the same owner of Capital Group in 2010, with the owner of Capital Group in 2011 and with the owner of

Capital Group in 2013. However, in 2014, Bartolini makes the following completely contrary and untrue statement with regard to the Park Central Project:

I've never done business with Park Central or any other building companies owned by the owner of Park Central LLC.

That statement is blatantly false as Park Central, LLC, now Park Central Investment, LLC, lists Depietri as the resident agent, manager and authorized signatory in its business entity summaries filed with the Massachusetts Secretary of State, copies of which are attached hereto as Exhibits "A" and "B".

As stated in the initial complaint, Park Central, LLC was the applicant for a 320 unit residential project in Southborough, with 180 units proposed under a MGL c. 40B comprehensive permit and 140 units proposed under a zoning use variance. The project is located primarily in the Industrial Park Zone in Southborough. Both the comprehensive permit and the use variance are the subject of pending litigation in the Superior Court brought by citizens and abutters of Southborough. These efforts are supported by the Petitioners who have presented two (2) petitions to the Board of Selectmen seeking the removal of Bartolini from his position as chairman and member of the ZBA. The first petition was dated July 9, 2016 and presented to the Selectmen on July 21, 2016. (Exhibit "C") The Selectmen did not hold a public hearing on Bartolini's removal as provided for in MGL c. 40A, §12. Rather they met with Bartolini in executive session on August 2, 2016 and, allegedly, accepted Bartolini's own recommendation that he step down as chairman. However, despite the documented issues regarding Bartolini's service on the ZBA, the Selectmen allowed him to continue as a full voting member.

As pointed out in the initial complaint, Bartolini filed a disclosure form on March 26, 2014 for the Park Central, LLC Project ("Project"). He incorrectly referred to the applicant as a

“special permit 40B”. In fact, the Project encompassed both a comprehensive permit under MGL c. 40B for 180 units of housing and a use variance for 140 units of market rate housing. However, Bartolini only prepared a disclosure form for the c. 40B component of the Project. In doing so, he failed to mark with an X the statement above the signature line which reads as follows:

_____ Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.

To the left of that statement reads the following directive:

If you cannot confirm this statement you should recuse yourself.

Rather than recuse himself, Bartolini went on to preside, participate in and vote in some thirty (30) ZBA hearings/meetings on the Project leading up to the final vote of approval on August 24, 2016. In addition, Bartolini never filed a disclosure statement for the separate use variance application and hearings which were also conducted by the ZBA and which resulted in the grant of a use variance on June 11, 2015.

Recent and continuing violations of the Conflict of Interest Law include the following:

1. On October 19, 2016, Bartolini participated as a member of the ZBA in a hearing and vote on two (2) administrative appeals from a decision of the Building Commissioner on whether the Park Central Project use variance decision, which was filed with the Town Clerk on June 11, 2015, had lapsed pursuant to the terms of MGL c. 40A, §10. Bartolini was one of four (4) members who voted to uphold the Building Commissioner’s decision that the use variance had not lapsed. The decision clearly benefits Depietri. A copy of the decision is attached hereto as Exhibit “D”. Bartolini did not file a §23(b)(3) disclosure statement before participating in the hearing and decision on these two appeals relating to the use variance.

2. On December 6, 2016, the Petitioners presented evidence to the Board of Selectmen in an open, public hearing in support of the two (2) petitions to remove Bartolini from his position as chairman and member of the ZBA. A copy of the notice of hearing and the eight charges as developed against Bartolini by the Board of Selectmen is attached hereto as Exhibit "E". Following that hearing, the Selectmen decided to take the matter under advisement. The undersigned counsel for the Petitioners raised the issue of Bartolini's status on the ZBA pending the hearing on removal, specifically with respect to a ZBA hearing on the Park Central Project that was scheduled on December 14, 2016. Two of the three members of the Board of Selectmen, Chairman Brian Shea and Member Paul Cimino, recommended that Bartolini not participate in that hearing pending the Selectmen's decision to remove him from the ZBA. Bartolini, through his attorney, refused to agree to recuse himself from the Park Central Project agenda item.
3. On December 14, 2016, the ZBA held a public hearing. However, the Park Central matter was continued to January 18, 2017 at the request of counsel for Park Central.
4. On December 15, 2016, the undersigned counsel for the Petitioners filed the initial Complaint of Violation of the Conflict of Interest Law with the Enforcement Division. Copies of the Complaint were provided to the chair of the Board of Selectmen and the chair of the ZBA.
5. On December 19, 2016, the Board of Selectmen again took up the issue of the December 6, 2016 hearing to remove Bartolini from the ZBA. Despite the fact that the conflict of interest issues were but one of the multiple allegations against Bartolini in the two (2) citizens petitions, the Selectmen decided to take no action against Bartolini pending the outcome of the December 15, 2016 complaint to the Ethics Commission.
6. On January 18, 2017, the ZBA took up the matter of Park Central's appeal from the

alleged failure of the Planning Board to issue a written decision within thirty (30) days of the September 29, 2016 vote to deny site plan approval for the use variance portion of the Project. The undersigned counsel for the Petitioners, as a point of order, raised the issue of Bartolini's conflict of interest on the Park Central Project to the chair, Andrew Dennington. The chair refused to require Bartolini to recuse himself and Bartolini, himself, refused to recuse himself from the hearing on the Park Central appeal. Following an extended presentation by counsel, the hearing was continued to February 15, 2017 and was to be combined with a second administrative appeal by the Park Central Project from a refusal of the Building Commissioner to issue an enforcement order regarding the question of whether the site plan approval in question had been constructively granted by the Planning Board's failure to issue a written decision within thirty (30) days of its September 29, 2016 vote to deny site plan approval.

7. At present, the Petitioners have been advised that counsel for Park Central has requested that the hearings on the two administrative appeals be continued from February 15, 2017 to a date in April, 2017. Bartolini has not filed a §23(b) disclosure statement regarding the Park Central Project as to either of the two appeals. Bartolini has not secured a written conflict of interest opinion from Town Counsel or the State Ethics Commission.

All of the above proceedings raise further questions regarding the issue of whether Bartolini's continuing participation in the Park Central Project constitute violations of §§ 3, 19, 20, 23(b)(2) and 23(b)(3) of MGL c. 268A.

In addition to the foregoing violations regarding the Park Central Project, the Petitioners bring the following additional allegations against Bartolini for separate violations of MGL c. 268A:

1. Violation of §20 by virtue of having a financial interest in a contract by the Town of Southborough.

In 2012, the Town of Southborough made payments in an amount totaling \$3,800 to PLB, LLC an entity which is owned and/or controlled by Bartolini. A copy of the PLB, LLC Business Entity Summary of the Massachusetts Secretary of State is attached hereto as Exhibit "F". I am also attaching a copy of transaction data from the Southborough Town Accountant, Heidi Kriger which shows three (3) payments made to PLB in 2012 in amounts of \$1,500.00, \$1,300.00 and \$1,000 between February and December of 2012, which is marked as Exhibit "F". Bartolini also received additional payments from the Town of Southborough through PLB in 2014.

2. Between January 16, 2010 and September 21, 2016 Bartolini has filed eleven (11) disclosure forms, one (1) under §6A and ten (10) under §23(b)(3).

A public records request by Petitioners' counsel resulted in information from the Board of Selectmen, Town Counsel and the Town Clerk that reveals that Bartolini has never requested a written opinion from Town Counsel or the State Ethics Commission regarding any conflict of interest question. Therefore, it appears that Bartolini has been submitting the forms and participating in matters before the ZBA without any legal guidance as to potential conflict of interest issues. This appears to be a situation of "self-policing" in which Bartolini has decided when and under what circumstances he will make alleged disclosures. A review of the entire set of eleven (11) disclosure forms, five (5) of which were previously submitted with the December 15, 2016 complaint, shows the following deficiencies and irregularities:

- (1) The forms are all completed in longhand which, in numerous cases, is almost indecipherable.

- (2) The information provided is often incomplete and does not meet the requirements of the disclosure form.
- (3) The information provided does not meet the detailed statement of facts requirements of §22 and does not fully present the nature of the proceedings before the ZBA in relation to the limited information disclosed by Bartolini.
- (4) In response to a public records request by Petitioner's counsel, it appears that none of the eleven (11) disclosure forms were filed with the Board of Selectmen, as the appointing authority, in accordance with the clear requirements of the disclosure form.
- (5) The specific allegations of deficiencies/illegals of the disclosure forms, a copy of which are attached hereto as Exhibit "G", are as follows:
 - a. 1/16/10: The form is incomplete in terms of its description of the "commercial land" which Bartolini states that he owns in Southborough.
 - b. 4/28/10: The form is incomplete as it does not describe the nature of the particular matter in which Bartolini will be presiding as a ZBA member. No time frame is presented as to the period of time which is encompassed by the reference that "Rosewood Development [a Depietri company] has previously rented units at my facility Southborough Self-Storage". A review of records at Secretary of State Galvin's Office, as well as Southborough Town Hall, revealed that there is no such business entity registered.
 - c. 6/28/10: This is a §6A form which is generally used by state employees or officials. The form does not reference the particular matter in which Bartolini will be participating regarding J+M Machine Shop.

- d. 10/27/10: The form does not disclose the particular matter before the ZBA. Bartolini states that "I have done business with the parent company with the same owner". However that statement is false as review of records in the Secretary of State's Office revealed that there was no parent company for Capital Group. Bartolini gives no details as to the time period or extent of the business he has done, or will do, with Depietri in this disclosure form. Bartolini concludes that the relationship "has no impact upon me finaialy [sic] or physically [sic]".
- e. 7/27/11: The form does not indicate the particular matter before the ZBA. Bartolini states that "I have done business with the owner [?]" . The next sentence is indecipherable. The last sentence appears, again, to be a self-serving conclusion that "This has no impact on me finacialy [sic] or physically [sic]" .
- f. 8/27/13: The form is incomplete in multiple respects. In response to the question "Describe your relationships or affiliations with someone involved" Bartolini answers "None". In response to the "Optional" category which requests "Additional facts – e.g. why there is a low risk of undue favoritism or improper influence", Bartolini states the following:

I have never done business with Capital Group but I have done business with the owner of Capital Group.

This appears to be the response to the preceding category which was answered "none". This is a clear indication of Bartolini's disregard for the specifics and the requirements of the disclosure form. Also, please note that the category on page 2 of the disclosure form was never completed

with the confirmation that Bartolini “feel[s] that I can perform my official duties objectively and fairly”. As directed by the statement “If you cannot confirm this statement, you should recuse yourself.” From information obtained from public records at Town Hall, Bartolini did not recuse himself from the Capital Group application for special permit for Stonybrook Village.

- g. 3/25/14: In this very important disclosure form regarding the Park Central Project, Bartolini states that the particular matter before the ZBA is “Park Central LLC for a special permit 40B”. This is not correct as the actual application is for a comprehensive permit for an affordable housing project under MGL c. 40B, a much more expansive application and process than a special permit. Bartolini describes the relationship with Park Central as “Rental of self-storage facility owned by the applicant”. This reference is highly questionable as Bartolini stated in his 4/28/10 disclosure above that he owns a “Southborough self-storage”. Once again, Bartolini uses the “Optional” category to describe the relationship with Park Central as follows:

I’ve never done business with Park Central LLC or any other building companies owned by the owner of Park Central. (emphasis supplied)

This statement is patently false as shown by Bartolini’s previous disclosures on 4/28/10, 10/27/10, 7/27/11 and 8/27/13. All of these disclosures confirm that he has, in fact, done business with Depietri who is the owner of Park Central.

Also, just as important, Bartolini fails to address and confirm the

statement on page 2 of the 3/25/14 form that "Taking into account the facts that I have disclosed above, I feel I can perform my official duties objectively and fairly." Once again, the form cautions that "If you cannot confirm this statement, you should recuse yourself."

Bartolini went on to participate in, as he has described it, thirty (30) ZBA public hearings on the Park Central Project between 3/25/14 and 8/24/16, the final date being the date the ZBA approved the Project by a vote of 3-0. Without Bartolini's participation in the vote on that date, the Project would have failed to secure the three votes required for approval under MGL c. 40B. However, more importantly, one of the issues in the judicial appeal from the grant of comprehensive permit is the fact that, on multiple occasions during those 30 hearings, when Bartolini was Chairman, the ZBA did not have a quorum of four (4) members at the hearings as required by the Southborough ZBA Rules and Regulations. A copy of the minutes of the 8/24/16 ZBA meeting is attached hereto as Exhibit "H". Since Bartolini had not completed the disclosure form and chaired the meeting at which Depietri's project was given final approval, the Petitioners allege that this meeting presents proof that Bartolini violated both §23(b)(2) and §23(b)(3) by using his position to gain unwarranted benefits for Depietri and by giving the impression to the neighbors and the general public that he was unduly influenced by the kinship, rank or position of Depietri.

- (h) It is important to point out here that, as referenced in the original complaint, Bartolini did not complete and file a §23(b)(3) disclosure form

for the use variance application, filed by Park Central to the ZBA, which was for a separate and distinct component of 140 market rate housing units which were part of the overall Park Central Project but not under the jurisdiction of the comprehensive permit. In fact, as part of the hearings on the c. 40B comprehensive permit, Bartolini actually proposed and recommended to the ZBA that it grant Depietri a use variance for the market rate component under c. 40A, §10. He then proceeded to participate in and vote to approve the use variance on the market rate component. This is also a clear violation of §23(b)(2) in that he used his official position to gain privileges for Depietri in the grant of a use variance which, under the terms of c. 40A, §10 can only be granted to properties and applicants who satisfy four (4) specific and demanding criteria.

- (i) 2/24/16: In this instance, there is no description of the particular matter before the ZBA. However, the disclosure reveals, apparently, that the applicant, John ("Jack") Bartolini, is a cousin of Bartolini's. He makes the following self-serving statement:

I do not have a conflict of interest and I am stepping down for consideration of the neighbors.

This statement is ironic in that Bartolini refused to step down in the Park Central Project matter despite the fact that it was a 320 unit development which, as proposed and approved, was opposed by the neighbors and which would have a substantial impact on the public safety and welfare of the residents due to the proposed unsafe flow of traffic to and from the

development through narrow, winding country roads in a residential zone and create traffic concerns relating to safety issues regarding access/egress to the development site from Route 9.

- (j) 9/21/16: In this disclosure form, Bartolini acknowledges that he is an “abutter” to a location proposed for a digital billboard. In response to the question as to his responsibility for making a decision, he states “None” despite the fact that Bartolini is a member of the ZBA at the time. As an abutter, he clearly has a financial interest in the particular matter which, absent a §19(b) waiver by the Board of Selectmen, would prohibit him from participating in the hearing and vote on the matter. It should be noted that, once again, Bartolini ignored the required endorsement at the top of page 2 that states that he feels “that I can perform my official duties objectively and fairly”.
- (k) 9/21/16: For a second time, Bartolini filed a disclosure for a particular matter involving his cousin, John (“Jack”) Bartolini. In response to two separate questions on the form, Bartolini makes the following inconsistent statements regarding his role:

As chairman, I have limited activity as my board members make motions and 2nds [sic].

As chairman of the Board I control the process.

It is important to note that this form appears to have been completed in two different versions. The first page 2 fails to include an explanation under “Optional” and there is no endorsement on the important question as to whether Bartolini feels that he “can perform my official duties

objectively and fairly”.

The second page 2 appears to have been completed after the hearing which occurred and includes the following information under “Optional”:

I asked the residents of [sic] the meeting and asked if anyone wanted me to step down and there were only two comments and they were in favor of me sitting.

On the second page 2, Bartolini does endorse, with an X, that he “can perform my official duties objectively and fairly”. Apparently, Bartolini did not have the same concern for the residents at that time as he did on 2/24/11 when he decided to voluntarily step down “for consideration of the neighbors”. Importantly, this also establishes that Bartolini is aware of the required endorsement, by an X on page 2, if he intends to participate in the particular matter. One further significant issue is that the hearing actually took place on 6/15/16 but the form was not completed until 9/21/16. Bartolini sat on the hearing and his cousin was granted two (2) special permits. The minutes of the 6/15/16 meeting are attached hereto as Exhibit “F”.

A final point on this last 9/21/16 disclosure form is that while Bartolini refers to himself as chairman in the two responses noted above, he, technically, was no longer chairman after 8/2/16, the date of the Selectmen’s meeting in executive session on the Petitioners’ first Petition to Remove Bartolini. The records and minutes of that Selectmen’s meeting indicate he agreed to step down from the chairman’s position as his recommendation to the Selectmen for resolution of the multiple complaints against him by the citizens in the first petition.

As noted above, Bartolini continues to brazenly sit as a member of the ZBA on pending matters before the ZBA involving the use variance for Park Central. Despite the presentation made by the Petitioners' counsel before the Board of Selectmen on December 6, 2016, Bartolini has failed, since that date, to secure a conflict of interest opinion pursuant to §22, he has failed to file a disclosure form under §23(b)(3) and he has failed to consider the recommendation of two selectmen that he recuse himself from the Park Central Project matters before the ZBA until such time as the Ethics Commission renders its decision on the original December 15, 2016 complaint of violation as supplemented by this filing.

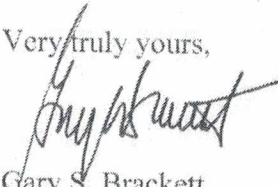
For all the above reasons, I respectfully request, on behalf of the hundreds of Southborough citizens who have signed the two petitions for removal of Bartolini, that you conduct your investigation and determine that Bartolini has violated and continues to violate multiple sections of MGL c. 268A in his conduct and participation as a member of the Southborough ZBA.

This letter constitutes a formal request and plea for your consideration of a recommendation to the Board of Selectmen of the removal of Mr. Bartolini (as well as any sanctions deemed appropriate by your commission under Massachusetts General Laws) from the ZBA. As previously noted, they have referenced waiting for your consideration. This is equally important to the residents of the Town of Southborough who have expressed numerous legitimate concerns that the ZBA process has been tainted by Bartolini's participation.

My clients and I are available to meet with you and/or any investigator and/or any representative of the State Ethics Commission at your earliest convenience in support of the prior submission and this supplement.

In the meantime, I will follow up with your office soon. Please contact me if you have any questions. Thank you for your cooperation and consideration of these matters.

Very truly yours,


Gary S. Brackett

GSB/dsh

Enclosures

cc: Petitioners
Brian Shea, Chairman, Board of Selectmen (via email)
Bonnie J. Phaneuf, Member, Board of Selectmen (via email)
Daniel J. Kolenda, Member, Board of Selectmen (via email)
John F. Rooney, III, Member, Board of Selectmen (via email)
Paul M. Cimino, Member, Board of Selectmen (via email)
Mark Purple, Town Administrator (via email)
Andrew Dennington, Chairman, Zoning Board of Appeals (via email)
Craig W. Nicholson, Clerk, Zoning Board of Appeals
David C. Williams, Member, Zoning Board of Appeals
Paul N. Drepanos, Member, Zoning Board of Appeals
Leo F. Bartolini, Member, Zoning Board of Appeals
Jeffrey M. Walker, Alternate Member, Zoning Board of Appeals
Deborah Demuria, Alternate Member, Zoning Board of Appeals
James F. Hegarty, Town Clerk (via email)
Aldo Cipriano, Town Counsel